

521A.3 Acquisition of control of or merger with domestic insurer.

1. *Filing requirements.* No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this section a domestic insurer shall include any other person controlling a domestic insurer unless the other person is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, for purposes of this section "*person*" does not include a securities broker holding, in the usual and customary broker's function, less than twenty percent of the voting securities of an insurance company or of a person which controls an insurance company.

2. *Content of statement.* The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

a. The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection 1 of this section is to be effected, hereinafter called "*acquiring party*".

(1) If such person is an individual, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

(2) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (1) of this paragraph.

b. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose including a pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

c. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

d. Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

e. The number of shares of any security referred to in subsection 1 of this section which each acquiring party

proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection 1 of this section, and a statement as to the method by which the fairness of the proposal was arrived at.

f. The amount of each class of any security referred to in subsection 1 of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

g. A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection 1 of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

h. A description of the purchase of any security referred to in subsection 1 of this section during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

i. A description of any recommendations to purchase any security referred to in subsection 1 of this section made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interview or at the suggestion of such acquiring party.

j. Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1 of this section, and, if distributed, of additional soliciting material relating thereto.

k. The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection 1 of this section for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

l. Additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection 1 of this section is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs "a" through "l" of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection 1 of this section is a corporation, the commissioner may require that the information called for by paragraphs "a" through "l" of this subsection shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

3. *Alternative filing materials.* If any offer, request, invitation, agreement or acquisition referred to in subsection 1 of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange

Act of 1934, or under a state law requiring similar registration, or disclosure, the person required to file the statement referred to in subsection 1 of this section may utilize such documents in furnishing the information called for by that statement.

4. Approval by the commissioner hearings.

a. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 if, after a public hearing on such merger or acquisition, the applicant has demonstrated to the commissioner all of the following:

(1) After the change of control the domestic insurer referred to in subsection 1 will be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(2) The effect of the merger or other acquisition of control will not substantially lessen competition in insurance in this state.

(3) The financial condition of any acquiring party will not jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders.

(4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are not unfair or unreasonable to policyholders of the insurer and are not contrary to the public interest.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer are sufficient to indicate that the interests of policyholders of the insurer and of the public will not be jeopardized by the merger or other acquisition of control.

b. The public hearing referred to in paragraph "a" shall be held within thirty days after the statement required by subsection 1 is filed, and at least twenty days' notice of the public hearing shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

c. The commissioner may retain any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed merger or acquisition of control, the reasonable cost of which shall be paid by the acquiring party.

5. Exemptions. The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom for one of the following reasons:

a. It has not been made or entered into for the purpose and does not have the effect of changing or influencing the control of a domestic insurer.

b. It is otherwise not comprehended within the purposes of this section.

6. *Violations.* The following shall be violations of this section:

a. The failure to file any statement, amendment, or other material required to be filed pursuant to subsection 1 or 2 of this section.

b. The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given approval thereto.

7. *Jurisdiction consent to service of process.* The district court is hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process, notice or demand in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process, notice or demand shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at the person's last known address.

[C71, 73, 75, 77, 79, 81, § 521A.3; 82 Acts, ch 1051, § 46]

86 Acts, ch 1102, § 911; 91 Acts, ch 26, §49, 50; 93 Acts, ch 88, §26; 97 Acts, ch 186, §26